IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7379 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 NO

YOGESHBHAI JARIWALA

Versus

MODIPON FIBERS CO.

Appearance:

1. Special Civil Application No. 7379 of 2001

MR AK CLERK for Petitioner

MR DG SHUKLA for NANAVATI & NANAVATI for Respondent

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 15/04/2002

ORAL JUDGEMENT

1. RULE. The learned counsel for the respondent waived service and at the request of the learned counsel, the petition was taken up for final disposal.

2. By this petition under articles 226 and 227 of the Constitution, the petitioner-workman has challenged the award dated 23.10.2000 of the Labour Court, Surat in Reference (LCS) No.199 of 1993.

3. According to the terms of reference, the dispute was as to whether the petitioner should be reinstated on his original post with full backwages. The defence of the respondent-employer before the Labour Court, inter alia, was that under a scheme of rationalization, the workmen and the management had arrived at a settlement in terms of which certain surplus workmen were required to voluntarily retire on or before 1.6.1993 and, in case of failure to voluntarily retire by that time, the management was to compulsorily dispense with the services of the surplus manpower strictly following the 'last come first go' principle. The petitioner contended before the Labour Court that the express and tacit conditions of the settlement were violated and the termination of service was not justified. The petitioner had also questioned the binding effect of the settlement. The Labour Court, therefore, framed the issues, inter alia, regarding its jurisdiction to adjudicate the dispute about the settlement itself, as to whether the petitioner's service was terminated in terms of the settlement and whether the demand for handing over carting and forwarding work to the cooperative society to be constituted out of the voluntarily retired employees was substantiated.

4. After appreciation of evidence on record and consideration of the contentions of the parties, it was found that the petitioner being the junior-most in his category, the termination was in conformity with the terms of the settlement which was held to be binding upon the parties. The alleged understanding, outside the terms of settlement, about handing over the carting and forwarding operations to a cooperative society to be constituted by the voluntarily retired employees was held not to have been proved. The challenge to the validity and fairness of the settlement itself was negatived and it was held that the allegation of juniors having been continued in service was also not proved. In view of the subsequent developments during the seven years of pendency of the proceedings also, the Court found and held that the petitioner was not entitled to reinstatement or backwages.

5. Against the above backdrop, the learned counsel Mr.Clerk appearing for the petitioner sought to assail the award mainly on the ground that the Labour Court had,

taking up the first jurisdictional issue last, decided that the matter of rationalization being listed in Schedule III of the Industrial Disputes Act, 1947, the Labour Court had no jurisdiction to adjudicate the dispute related that to. However, as seen earlier, the legality or otherwise of rationalization or anything related that to was not included in the terms of reference and the order by which the dispute was referred was never challenged by the petitioner. Therefore, it clearly appears that the issue of legality or otherwise of rationalization arose only as a incidental issue and the reference ought not to have been rejected only on the ground of lack of jurisdiction for adjudicating a dispute relating to rationalization. The Labour Court was right and justified in examining all the issues raised by the parties and denying the relief even while holding that the issue of rationalization was beyond its jurisdiction.

6. In such circumstances, the learned counsel Mr.Clerk made a feeble attempt to suggest that the rejection of the reference might be upheld only on the ground of lack of jurisdiction, but the petitioner may be permitted to raise another industrial dispute in the appropriate terms which may be referred to the appropriate forum. It is, however, amply clear that such course can hardly serve any purpose except that of indirectly duplicating the whole exercise of adjudication without the petitioner having raised any dispute about rationalization itself at the appropriate time.

7. In the aforesaid facts and for the reasons discussed hereinabove, the petition is dismissed. Rule is discharged with no order as to costs.

Sd/-

(D.H.Waghela, J.)

15.4.2002

(KMG Thilake)